

SIXTH DIVISION
June 13, 2014

No. 1-13-2484

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL FADDIS and ELIZABETH FADDIS,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellees,)	Cook County.
)	
v.)	Nos. 11 CH 43875 &
)	11 M1 729144
BOARD OF DIRECTORS OF THE 1850-56 NORTH)	Consolidated
NORTH LINCOLN AVENUE CONDIMINIUM)	
ASSOCIATION,)	Honorable
)	Thomas R. Allen,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm the decision of the trial court, which was reached after a bench trial, that the condominium unit owners were not responsible for the entire costs of repairs to a damaged interior beam.

¶ 2 This appeal stems from consolidated chancery and forcible entry and detainer actions, which concerned a dispute over the responsibility for the costs of repairs which were made to common elements of the condominium building located at 1850-56 North Lincoln Avenue, Chicago, Illinois (the building). Defendant-appellant, the Board of Directors of the 1850-56

North Lincoln Avenue Condominium Association (the Board), determined that the costs of the repairs were entirely the responsibility of plaintiffs-appellants, Michael and Elizabeth Faddis (together, the Faddis'), the owners of condominium unit 1854-1 (unit 1). The Board brought the forcible entry and detainer action (case number 11 M1 729144, hereinafter referred to as the forcible action) to gain possession of unit 1 for the Faddis' failure to pay the charges. The Faddis' brought the chancery suit (case number 11 CH 43875, hereinafter referred to as the chancery action) seeking a declaration that they should not be wholly responsible for the charges and for the removal of a lien which was placed on their unit by the Board. After a bench trial, the trial court found in favor of the Faddis' as to their declaratory judgment claim in the chancery action and against the Board on its forcible action. The trial court further ordered the Board to remove the lien. We find the trial court did not err in finding the entire repair charges were not wholly the responsibility of the Faddis', and therefore affirm.

¶ 3

I. BACKGROUND

¶ 4 The forcible action was commenced by the Board against the Faddis' in the municipal division of the circuit court of Cook County on December 8, 2011. The Board, in addition to seeking possession of unit 1, requested damages of \$31,926.24, which were the claimed costs of the repairs to common elements at issue here, and "future occurring assessments and charges." Thereafter, the Faddis' filed the chancery action in the chancery division of the circuit court of Cook County against the Board, which included declaratory judgment (count I) and slander-of-title (count II) claims. On the Faddis' motion, the forcible action was transferred and then consolidated with the chancery action in February 2012, to proceed under the case number of the chancery action.

¶ 5 The complaint in the chancery action set forth the factual background of the parties' dispute. The Faddis' are the owners of unit 1 in a building which consists of 12 condominium units. Sarah Owen, president of the Board, owns unit 2, which is located directly above the Faddis' unit.

¶ 6 In the autumn of 2006, the Faddis' began renovations to their unit. The renovations included the removal of a cabinet and associated wall framing adjacent to the kitchen. After the removal of the cabinet, new ceiling framing and drywall were installed in that area. Sometime after these repairs, Ms. Owen discovered gaps and cracks in her floor. After receiving engineering/inspection reports dated March 28 and September 22, 2010, the Board authorized necessary repairs to an interior support beam—a common element. The Board concluded the Faddis' renovations, which were completed without the Board's approval, had impaired the structural integrity of the building and, therefore, the Faddis' were responsible for the entire costs related to those repairs.

¶ 7 In assessing the charges against the Faddis', the Board relied on sections 7.01(g) and 4.07 of the association's declaration and by-laws (the declaration). Section 7.01(g) states, in pertinent part:

"Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Building except as is otherwise provided herein."

Section 4.07 states:

"Negligence of Unit Owner. If, due to the willful misconduct or negligent act or omission of a Unit Owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the

Common Elements or to a Unit owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board."

The declaration was attached to the chancery complaint.

¶ 8 The Faddis' alleged that an engineering report, dated March 28, 2010, "concluded that the beam deficiencies preexisted the [Faddis'] renovation project." It was the Faddis' contention that the costs of repair must be shared proportionally by all unit owners under section 4.06(a) of the declaration. That section states, in relevant part:

"The Association, at its expense, shall be responsible for the maintenance, repair, and replacement of those portions, if any, of each Unit which contribute to the support of the Building excluding, however, all windows and window frames, all exterior doors and the interior surfaces of walls, ceilings and floors which shall be the responsibility of the Unit Owner. *** Maintenance, repairs, and replacements of the Common Elements shall be furnished by the Association acting by and through the Board as part of the Common Expenses ***."

¶ 9 On October 28, 2011, the Board mailed the Faddis' a "Notice and Demand for Possession" (Notice). The Notice stated the Faddis' owed the Board \$31,926.24 for the costs of repairs to the damaged beam. The Board recorded a lien on unit 1 in the amount of the repairs with the Cook County Recorder of Deeds on November 3, 2011.

¶ 10 In the chancery action, the Faddis' sought a declaration that they were not liable for the entire costs of the repairs, but for only their proportionate share as unit owners, as well as an order directing that the lien be removed as an improper cloud on the unit's title.

¶ 11 With regard to the chancery action, the Board filed a motion for judgment on the pleadings pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2010). That motion was denied, and the Board then filed an answer and counterclaim to the chancery action. In the counterclaim, the Board realleged its forcible claims and sought possession of unit 1 and the recovery from the Faddis' of the amount owed as a result of the repairs. The Faddis' motion for summary judgment was denied and the matters proceeded to a bench trial.

¶ 12 A transcript of proceedings from the bench trial is not included in the record on appeal. The parties agreed to and jointly signed a "Bystander's Report" pursuant to Illinois Supreme Court Rule 323(d) (Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005)), which was filed in this court on December 18, 2013. According to the bystander's report, the evidence presented at trial was as follows.

¶ 13 Michael Faddis testified he and a friend, a licensed contractor, renovated unit 1. In the course of those renovations, they removed a partition which separated the dining room and kitchen. The partition included built-in drawers and shelves and a niche for a refrigerator. When the partition was removed, Mr. Faddis observed a damaged interior beam. The contractor reinforced the beam, then installed drywall, which covered the beam. Mr. Faddis asked the contractor whether "he could 'push up' the floor" in Ms. Owen's unit. The contractor advised Mr. Faddis that such an action would compromise the structural integrity of the surrounding joists. The Faddis' conducted the renovations without obtaining the Board's approval, giving the Board notice of the work, or obtaining a permit. Mr. Faddis did not inform the Board about the damaged beam or his reinforcement of the beam.

¶ 14 Roberta LaMonica, secretary of the Board, and Janis Nagobads, treasurer of the Board, testified that the Board did not give Mr. Faddis permission to perform the renovations to unit 1. Mr. Nagobads knew the work was being done in unit 1, but did not ask that the work stop.

¶ 15 Ken Karston, an engineer with 18 years' experience, testified as an opinion witness for the Faddis'. Mr. Karston was hired by the Board to investigate the condition of Ms. Owens' unit and determine a cause for the damage to the floor. To conduct his inspection, Mr. Karston cut holes in the floor of unit 2 and removed parts of the ceiling drywall in unit 1. He discovered an interior beam which "had defects at 3-4 places along its length." Mr. Karston submitted a report to the Board stating the beam was "in danger of collapse," and should be repaired immediately.

¶ 16 The bystander's report does not show whether Mr. Karston's engineering reports were admitted into evidence at trial and the reports themselves are not contained in the record on appeal. Pursuant to its answers to requests to admit, the Board admitted to receiving from Mr. Karston a five-page report dated March 28, 2010, which included three exhibits, and a one-page report dated September 22, 2010, both of which related to the damage to unit 2. The bystander's report reflects that Mr. Karston did testify to his findings and recommendations.

¶ 17 Mr. Karston found as follows: (1) the damaged beam at issue was " 'not capable of supporting the City of Chicago minimum design live load of 40 psf and would be considered to be deficient;' " (2) there were splits in the beam caused by "insufficient beam capacity (in the unit 2 floor framing) to support the loads imposed ***;" (3) there were holes in the beam which were created for electrical conduit and which further reduced the strength of the beam; (4) the past removal of a staircase between units may have caused further beam deficiency; and (5) the gaps and cracks in unit 2's flooring was "caused by settlement and deflection of unit 2 floor framing members."

¶ 18 Mr. Karston described the partition which was removed in unit 1 "as coming out from the wall about 3½ to 4 [feet] and about 3 [feet] deep," and reaching from floor to ceiling. Mr. Karston believed that the removal of this partition "did allow the north-south beam and attached framing to drop further downward which contributed to the floor deflection, gaps and cracks found in Unit 2." He stated that the partition "was not originally constructed to be a bearing wall, but *** likely provided additional and unintended support for this suspect beam." The removal "worsened" the existing deficiencies in the unit 2 floor framing. Mr. Karston stated the Faddis' "were 'most likely unaware of the support that this framing was providing for the second floor.' " Mr. Karston stated that "the beam deficiencies pre-existed the [Faddis'] renovation project."

¶ 19 Mr. Karston believed that if the beam had not been repaired, it "would have collapsed at some point. It was inevitable that the beam would fail." The damaged beam and two cross beams "were replaced by wood [and] steel composite type beams that would provide the load-bearing capacity required by [the] current Chicago building code."

¶ 20 The bystander's report indicates that, during the trial, Mr. Karston and the trial judge "reviewed photos of the beam from the engineering report." The bystander's report describes the photographs as depicting the exposed damaged beam and the adjacent brick wall. No further detail of the photographs was provided in the bystander's report. The photographs are not part of the record on appeal.

¶ 21 Ms. Owen, who was elected president of the Board in May of 2006, testified that she knew the Faddis' were renovating their unit in 2006 and 2007, but she did not request that the work be stopped. When the Faddis' did not pay for the repair charges, the Board authorized the filing of a lien against the Faddis' unit and the forcible action.

¶ 22 Ms. Owen generally testified as to the scope of repair work done by "Total Homes." She said that "[a]ll of the work contracted from Total Homes outlined in the original scope of work was done in [unit 1]. No renovations were done in [unit 2]." Ms. Owen further explained that a "second scope of work" included repair of the holes made in unit 2 to conduct the inspection done by Mr. Karston. As part of the "second scope of work," Mr. Karston and someone from Total Homes inspected a "corner post" (not the suspect beam) which had "minor surface rot," but was structurally sound. There is no indication that anyone from Total Homes testified at the trial. The record does not show whether bills, proposals, contracts or reports from Total Homes were considered at trial, and no such documents are included in the record.

¶ 23 The bystander's report indicates the trial court made oral findings at the end of the bench trial. The bystander's report summarizes the trial court's findings as follows:

"Per the testimony of the expert, the beam was structurally deficient. The test performed by the expert showed the construction type was that of mortise tenon joints used in older buildings and not structurally sound. An inspection of the beams showed that the wood was split, weakening its structure; it was further weakened from numerous holes drilled into the beams for the running of electrical conduit pipes. The beams were 'overstressed' and not in compliance with Chicago Building Code requirements. Three beams had to be replaced to make the structure sound.

Mr. Faddis did some remodeling in his unit. The work involved the removal of a kitchen cabinet and framing which no reasonable person would believe was related in any way to any structural element of the building. The kitchen cabinet was ten to twelve feet from any perimeter wall. It was a decorative cabinet unit not attached to any perimeter or exterior wall. The cabinet, for aesthetic purposes, was framed in and attached to the

ceiling, abutting the structurally deficient beams. It was finished off with drywall and then painted. Mr. Faddis' actions did not cause the structural deficiency. Mr. Faddis' work in his unit did not constitute 'additions, alterations, or improvements which altered the structure of the unit.'

Furthermore, in regard to the need for board approval, Ms. Owen testified she knew most unit owners did regular redecorating and remodeling on a continuous basis. None obtained permission from the Board, including Ms. Owen herself when she replaced all the plumbing pipes in her garden unit with neither Board approval nor the required city permits."

¶ 24 On June 27, 2013, the trial court entered an order finding in favor of the Faddis' on their declaratory claim (count I of the chancery action), but denying the Faddis' a judgment as to their slander of title claim (count II of the chancery action). The order, however, did direct the Board to release the lien which it placed on unit 1. The trial court found against the Board on its forcible action and dismissed its counterclaim in the chancery action.

¶ 25 The Board has appealed from the June 27, 2013, order.

¶ 26 II. ANALYSIS

¶ 27 On appeal, the Board challenges the trial court's judgment in favor of the Faddis' on the declaratory-action count of the chancery action, finding that the Board improperly charged the entire amount of the costs of the repairs to the damaged beam against the Faddis'. The Board argues that the trial court's ruling was contrary to the plain language of section 4.07 of the declaration.

¶ 28 The relationship between a condominium association and its unit owners is based not only on the condominium's declaration, by-laws, and rules and regulations, but also on the

provisions of the Condominium Property Act. 765 ILCS 605/1 *et seq.* (West 2008); *Spanish Court Two Condominium Association v. Carlson*, 2014 IL 115342, ¶ 21. Where there is a controversy regarding the rights of a condominium unit owner, we will examine the relevant provisions of the Condominium Property Act and the declaration or by-laws of the condominium association and construe them as whole. *Goldberg v. Astor Plaza Condominium Ass'n*, 2012 IL App (1st) 110620, ¶ 47. "Under [the condominium] act, the board of managers, through whom the association of unit owners act [citation] has the duty '[t]o provide for the operation, care, upkeep, maintenance, replacement and improvement of the common elements.' [Citation.]" *Spanish Court Two Condominium Ass'n*, ¶ 21.

¶ 29 Under section 4.06 of the declaration here, the Association is responsible for the repair of common elements and the costs are considered as common expenses. However, if by the willful misconduct or negligent act or omission of a unit owner's "damage shall be caused to the Common Elements," the unit owner must pay for the repairs as set forth in section 4.07. An owner, under section 4.09, may not alter the structure of the unit, or alter a common element, without prior written consent of the Board. Section 7.01(a) prohibits any action which "will impair the structural integrity of the Building or which would structurally change the Building."

¶ 30 The trial court reached its decision after a bench trial and, thus, the standard of review is whether the judgment is against the manifest weight of the evidence. *Casey v. American Family Brokerage, Inc.*, 391 Ill. App. 3d 273, 277 (2009). A judgment is against the manifest weight of the evidence only where the opposite conclusion is apparent, or where the findings are arbitrary, unreasonable, or not based upon evidence. *International Capital Corp. v. Moyer*, 347 Ill. App. 3d 116, 122 (2004). We give "deference to the trial court's perception of the evidence before it,

because the trial judge is in a better position than we to observe the witnesses and assess their credibility." *Muhammad v. Muhammad-Rahmah*, 363 Ill. App. 3d 407, 414 (2006).

¶ 31 As appellant, the Board had "the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error." *Midstate Siding & Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)).

The record does not contain transcripts of the proceedings from the bench trial. The Board did provide an agreed-bystander's report which, generally, sets forth the nature of the testimony of witnesses and was signed by the parties' counsel. The bystander's report was ostensibly filed pursuant to Illinois Supreme Court Rule 323(d), which provides: "The parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings." Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005). However, it is Rule 323(c) that actually sets forth the procedures for a bystander's report in lieu of a verbatim transcript, and those procedures were not followed in this case. We may accept the bystander's report as being in fact a Rule 323(d) agreed statement of fact. *People v. Morales*, 343 Ill. App. 3d 987, 989 (2003) (where court accepted a "bystander's report" which was assigned by parties and submitted pursuant to Rule 323(d)). However, the bystander's report provided is insufficient to review the trial court's decision under a manifest weight of the evidence standard.

¶ 32 Specifically, the bystander's report does not fully describe the evidence presented at trial, as the trial court's ruling refers to testimony not set forth in the bystander's report. The bystander's report does not indicate whether there were additional witnesses nor show what documentary evidence may have been presented and allowed or denied admission into evidence. The bystander's report indicates photographs were viewed by the trial court during Mr. Karston's

testimony, but these photographs are not in the record. According to the bystander's report, Ms. Owen testified to the scope of work which was done by Total Homes. We have not been informed as to whether there were any contracts, bills, or proposals as to the work performed by Total Homes. Ms. Owens' description of the work performed by Total Homes does not include a reference to the damaged beam at issue. We have not been told if the costs of the repairs were established and defined at trial.

¶ 33 When the record on appeal is incomplete, the reviewing court must apply every possible presumption favoring the trial court's judgment (*Wakrow v. Niemi*, 231 Ill. 2d 418, 428 fn 4 (2008)), including that the proceedings were regular and fair, and that the trial court ruled correctly in accordance with the law and with a sufficient factual basis (*Smolinsky v. Voita*, 363 Ill. App. 3d 752, 757-58 (2006); *Lisowski v. MacNeal Memorial Hosp. Ass'n*, 381 Ill. App. 3d 275, 282 (2008)). The inadequacy of the record presented to this court would alone support affirming the trial court's decision.

¶ 34 Even if we were to consider only the bystander's report, we would find the trial court's decision to have been well supported by the trial evidence. According to the bystander's report, the evidence shows the interior support beam at issue was damaged prior to the Faddis' renovations. Based on his inspection and evaluation of the beam, Mr. Karston opined that the repairs to the beam were required because of the beam's deficiencies. Mr. Karston did not testify the repairs to the beam were necessitated by any action or inaction by the Faddis'. Furthermore, there is no showing that the Faddis' actions or omissions increased the scope or costs of the repairs to the beam. We conclude that the trial court's decision that the Faddis' did not cause the damage to the beam which necessitated the repairs at issue was not against the manifest weight

of the evidence. Thus, the Faddis' were not responsible for the entire charges for the repairs to the beam under section 4.07 of the declaration.

¶ 35 Additionally, the evidence established that the partition, which was removed by the Faddis', was not designed nor intended to provide structural support. Mr. Karston testified that the Faddis' would not have been aware that the partition was providing "unintentional" support due to the damaged and weakened beam. The trial court's decision—that the Faddis' did not impact the structural integrity of the building, under section 7.01(g) of the declaration—was also not against the manifest weight of the evidence.

¶ 36 Finally, we note that the Board has not presented arguments on appeal as to any error in the trial court's adverse rulings on its forcible action and the counterclaim, nor with regard to the order directing the Board to remove the lien on unit 1. Therefore, any possible assertions of error as to these rulings have been waived. See Ill. S. Ct. R. 341(h)(7) (eff.Feb.6, 2013) ("Points not argued are waived.").

¶ 37 III. CONCLUSION

¶ 38 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 39 Affirmed.